

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Giovanni Moss, Director, Housing and Community Development,  
954-797-1226

**PREPARED BY:** Burton Spiwak, Programs Specialist, Housing and Community  
Development

**SUBJECT:** Resolution authorizing the Mayor to execute a Service Provider  
Agreement with McLaughlin Engineering Company for Surveyor Services

**AFFECTED DISTRICT:** Town Wide

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SERVICE PROVIDER AGREEMENT WITH MCLAUGHLIN ENGINEERING COMPANY TO PROVIDE SURVEYOR SERVICES UNDER THE TOWN'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP) AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** On April 1, 2009, the Town Council approved Resolution R-2009-71 authorizing the Mayor to execute and submit an application in the amount of \$2,316,292 and Housing Assistance Plan to the State Department of Community Affairs (DCA) for the Neighborhood Stabilization Program. The budget amendment was approved by Ordinance 2009-13 on May 20, 2009, which approved the funding for the NSP Program. On November 9, 2009, an advertisement requesting bids for a NSP Surveyor Services provider was published in the Sun-Sentinel Newspaper and the Selection Committee selected McLaughlin Engineering Company. By Resolution R-2010-3, approved on January 6, 2010, the Town Council authorized the Town Administrator or his designee to negotiate an agreement with McLaughlin Engineering Company. An agreement has been negotiated between the Town of Davie and McLaughlin Engineering Company at a fee which is more fully described in Exhibit B of the agreement to provide surveyor services.

**PREVIOUS ACTIONS:** Resolution R-2009-71 approved on April 1, 2009 authorizing the Mayor to execute an application and Housing Assistance Plan requesting \$2,316,292 in NSP funds; Ordinance 2009-13, approved on May 20, 2009 approved the budget amendment providing the funding for the NSP Program; Resolution R-2010-3, approved January 6, 2010 authorized the Town Administrator or his designee to negotiate an agreement between the Town and McLaughlin Engineering Company.

**CONCURRENCES:**

**FISCAL IMPACT:** Yes

Has request been budgeted? Yes

If yes, expected cost: See Exhibit B of agreement

Account name and number: Contractual Services - 011-1607-554.03-06

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments:

**RECOMMENDATION(S):** Motion to approve resolution

**Attachment(s):** Resolution, Surveyor Services Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SERVICE PROVIDER AGREEMENT WITH MCLAUGHLIN ENGINEERING COMPANY TO PROVIDE SURVEYOR SERVICES UNDER THE TOWN'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP) AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 1, 2009, by Resolution No. R-2009-71, the Davie Town Council authorized the Mayor to execute and submit an application in the amount of \$2,316,292 and Housing Assistance Plan to the State Department of Community Affairs (DCA) for the Neighborhood Stabilization Program; and

WHEREAS, on May 20, 2009, the Town Council approved a budget amendment by Ordinance 2009-13 which provided funding under the NSP Program; and

WHEREAS, on November 9, 2009, an advertisement requesting proposals to provide Surveyor Services under the NSP was published in the Sun-Sentinel Newspaper; and

WHEREAS, the Selection Committee selected McLaughlin Engineering Company as the firm best qualified to provide the required services; and

WHEREAS, on January 6, 2010, by Resolution No. R-2010-3, the Town Council approved the selection of McLaughlin Engineering Company to provide surveyor services under the NSP Program and authorized the Town Administrator or his designee to negotiate an agreement; and

WHEREAS, an agreement between the Town and McLaughlin Engineering Company has been negotiated and the Town of Davie believes that such an agreement at

a fee which is more fully described in Exhibit B of the agreement will be beneficial to all parties and will result in great benefit to the residents of the Town of Davie; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor or her designee is hereby authorized to execute the Agreement between the Town of Davie and McLaughlin Engineering Company to provide surveyor inspection services under the Town's Neighborhood Stabilization Program at a fee as set out above.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010

\_\_\_\_\_

MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010

## **AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between \_\_\_\_\_, hereinafter called the SURVEYOR with a DUNS number of 032281214 and the TOWN OF DAVIE herein called the TOWN.

WITNESSETH: That the TOWN and the SURVEYOR for the consideration hereinafter named, agree as set forth below:

### **Article 1. SCOPE OF WORK**

As per specifications of advertised and sealed bid in Town of Davie Bid #09-147, SURVEYOR, as an independent contractor and not as an employee, shall furnish, for the sums as provided for in Article 4, all of the necessary labor, material, and equipment to perform the work described in accordance with the Contract Documents.

### **Article 2. TIME OF COMPLETION**

\_\_\_\_\_ Days from receipt by the SURVEYOR of the Notice to Proceed.

### **Article 3. GENERAL**

The SURVEYOR hereby certifies that he has read every clause of the Contract Documents and that he has made such examination of the location of the proposed work as is necessary to understand fully the nature of the obligation herein made; and shall complete the same the time limit specified herein in accordance with the plans and specifications.

The TOWN and SURVEYOR agree to maintain records, invoices, and payments for the work. Surveyor acknowledges and agrees that all payment to be made under this contract is derived from Community Development Block Grant – Neighborhood Stabilization Program funds and the SURVEYOR shall execute a valid “Release of Liens” and agrees to look solely to the Town of Davie for payment for services hereunder. The foregoing provision shall be inserted into any contracts between the surveyor and any subcontractors, materialmen, laborers, and or suppliers under this contract.

All work under this Contract shall be done to the satisfaction of the TOWN, who shall in all cases determine the amount, quality, fitness, and acceptability of the several kinds of work and materials which are to be paid for hereunder, and shall decide all questions which may arise as to fulfillment of the Contract on the part of the SURVEYOR, and his decision thereon shall be final and conclusive; and such determination and decision, in case any question shall arise, shall be a condition precedent to the right of the SURVEYOR to receive any money hereunder.

Any clause or section of this contract or specification which may for any reason be declared invalid by a court of competent jurisdiction, including appeal, if any,

may be eliminated therefrom; and the intent of this Contract and the remaining portion thereof will remain in full force and effect as though such invalid clause or section has not been incorporated therein.

#### Article 4. QUANTITIES AND PRICES

The TOWN shall pay the SURVEYOR for all work included and completed in accordance with this Contract, based on the items of work set forth in the SURVEYOR'S Bid Form and more particularly set out in Exhibit B of this agreement.

#### Article 5. ACCEPTANCE AND FINAL PAYMENT

When the work provided for under this contract has been completed, in accordance with the terms thereof, a lump sum payment request in the amount of such work shall be prepared by the SURVEYOR, and filed with the TOWN within fifteen days after the date of completion. The lump sum payment request shall be accompanied by a Certificate of Acceptance issued by the TOWN stating that the work has been completed to its satisfaction, in compliance with the Contract. The Certificate of Acceptance shall not be issued until the final inspection has occurred. In accordance with the Local Government Prompt Payment Act, after receipt of the final acceptance by the TOWN, the TOWN shall make payment to the SURVEYOR in the full amount. The acceptance by the Surveyor of final payment shall be and shall operate as a release to the Town of Davie as TOWN, and also to the Owner of the subject property upon which the work was performed, from all claims and all liability to the Surveyor other than claims in stated amounts as may be specifically excepted by the SURVEYOR for all things done or furnished in connection with the work under this Contract and for every act and neglect of the TOWN and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the SURVEYOR or its sureties from any obligations under the Payment Bond and/or Performance Bond, if any.

#### Article 6. THE CONTRACT DOCUMENTS

The General Conditions, Special Conditions, Specifications, Bid Documents, Insurance Requirements (Exhibit A), Bonds, and the Drawings, together with this Agreement, form the Contract, and are fully a part of this Contract as if included herein.

#### Article 7. TERMINATION FOR CAUSE AND/OR CONVENIENCE

##### Termination (Cause and/or Convenience)

- (a) This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt

requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

- (b) This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in l(a) above.
- (c) If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the surveyor at the time of termination may be adjusted to cover any additional costs to the local government because of the surveyor's default.
  - If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.
  - For any termination, the equitable adjustment shall provide for payment to the surveyor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the surveyor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.
- (d) Upon receipt of a termination action under paragraphs (a) or (b) above, the surveyor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the surveyor in performing this contract, whether completed or in process.
- (e) Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.
- (f) If, after termination for failure of the surveyor to fulfill contractual obligations, it is determined that the surveyor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (c) above.

## Article 8. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the surveyor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration if the parties mutually agree or in a Florida court of competent jurisdiction.

## Article 9. ACCESS TO RECORDS

The local government, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the surveyor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

## Article 10. RETENTION OF RECORDS

The surveyor shall retain all records relating to this contract for six (6) years after the Department of Community Affairs has accepted the final closeout documents for the grant from the local governments and all other pending matters are closed.

## Article 11. ENVIRONMENTAL COMPLIANCE

If this contract exceeds \$100,000, the surveyor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The SURVEYOR shall include this clause in any subcontracts over \$100,000.

## Article 12. ENERGY EFFICIENCY

The SURVEYOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

## Article 13. VENUE

This agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.



#### Article 14. NOTICE

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following

##### FOR TOWN:

Giovanni Moss, Director  
Housing and Community Development  
4700 Southwest 64<sup>th</sup> Avenue, Suite D  
Davie, Florida 33314

##### SURVEYOR:

Jerald McLaughlin  
McLaughlin Engineering Company, Inc.  
400 NE 3<sup>RD</sup> Avenue  
Fort Lauderdale, Florida 33301

#### Article 15. EXECUTION

This document shall be executed in three (3) counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the TOWN OF DAVIE and MCLAUGHLIN  
ENGINEERING COMPANY, Inc. have executed this agreement the day and  
year first above written.

TOWN OF DAVIE

ATTEST:

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BY:

Mayor/Council Member

\_\_\_\_\_  
Russell Muniz, CRM, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

State of Florida

County of Broward

The Foregoing instrument was acknowledged before me, the undersigned  
Notary Public in and for the State of Florida, on this, the \_\_\_\_ day of  
\_\_\_\_\_, 2010 by Russell Muniz, CRM, City Clerk and Judy Paul,  
Mayor, respectively.

Notary Public, State of Florida

NOTARY PUBLIC

SEAL OF OFFICE

\_\_\_\_\_  
Printed, typed or stamped name  
of Notary Public exactly as  
commissioned

Individuals who signed are personally known: no identification produced.

\_\_\_\_\_  
Company, Inc.  
Witness

McLaughlin Engineering

By: \_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this, the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned Notary Public of State of Florida, the foregoing instrument was acknowledged by Jerald McLaughlin, President, of McLaughlin Engineering Company, Inc., a Florida (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand

And official seal

Notary Public, State

of Florida

\_\_\_\_\_  
Printed, typed or stamped name of Notary Public exactly as commissioned

Personally known to me or produced identification

#### EXHIBIT A

##### Surveyor's Scope of Responsibilities:

The project will involve surveying 1-18 single family residential detached homes, condominiums, townhomes and/or villas that are vacant and foreclosed.

All surveys shall meet the minimum technical standards as set forth in F.A.C. 61G-17 and shall include the following:

- a) The location of all property corners and the footprint of all existing permanent structures on the property.
- b) Permanent corner markers.
- c) The floor elevation of all structures located on the property.

## EXHIBIT B

All surveys and survey related services shall be subject to and paid from the following hourly rate schedule.

Principal in Charge	\$150.00
Professional Engineer	\$150.00
Professional Planner	\$125.00
Professional Surveyor	\$125.00
Project Manager/Coordinator	\$125.00
GPS Survey Crew (3 men)	\$150.00
Survey Crew (4 men)	\$135.00
Survey Crew (3 men)	\$115.00
Computer Technician	\$ 85.00
Drafting	\$ 75.00
Office/Clerical	\$ 50.00
Plan reproductions (\$50 for 3/\$5 each additional)	